229202

BEFORE THE

SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
APR 12 2011
Part of
Public Record

Ex Parte No. 705

Competition in the Rail Industry

# COMMENTS OF OCCIDENTAL CHEMICAL CORPORATION

**Robin Burns**
**Vice President –Supply Chain**
**Occidental Chemical Corporation**
**5005 LBJ Freeway**
**Dallas, Texas 75244**
**Telephone: (972) 404-3305**

Occidental Chemical Corporation (together with its affiliates, "OxyChem") is a leading North American manufacturer of basic chemicals and vinyl resins, including chlorine, caustic soda and polyvinyl chloride (PVC) – the building blocks for a range of products. OxyChem employs approximately 3,000 people at 21 domestic locations spread throughout the central to eastern United States. Our products, which are used in water purification, medical supplies, pharmaceuticals, construction materials and agricultural chemicals, are vital to the economy of the United States.

In 2010, OxyChem shipped 63,000 loaded railcars and incurred more than $220MM in rail freight charges. Over the past five years, including a period of general economic recession, OxyChem has experienced exorbitant rate increases. Our rates have increased on average from 30% to 160% for all chemical commodities. During this same time frame, rail costs, as reflected in the RCAF-U and RCAF – A (Rail Adjustment Factors), increased 19% and 23% respectively. In fact, over the past two years the RCAF-U and RCAF-A decreased by 8 and 10% respectively. Furthermore, these excessive increases serve to reduce the global competitiveness of our customers and ultimately increase the cost paid by consumers for end products.

We believe the rail rate increases imposed on OxyChem are directly related to the market dominance of the railroads. Over 70 percent of our origin/destination pairs are served by only one railroad, which effectively provides that railroad with monopolistic pricing power in that market. In addition, the Railroads use industry rules, agreements and protocols to further limit competitive options. These added restrictions take many forms, including Paper Barriers, Routing Protocols, Bottleneck Rates and Access Pricing. Although the Board has asked for input regarding several areas, we would like to focus on ones that are particularly problematic for OxyChem. To demonstrate the impact of these restrictions on our business, we offer the following current examples:

Paper Barriers : OxyChem is interested in pursuing an opportunity in Scranton, PA. The customer has two locations in Scranton, one served by the DL railroad, the other by the RBMN railroad. Both the DL and RBMN railroads interchange with the Norfolk Southern (NS) and Canadian Pacific (CP) railroads, so multiple routes should be possible. However, a paper barrier prevents the RBMN from receiving freight from the CP unless the CP originates the freight. Since our freight originates in Texas (not a CP served area), the only bridge carrier allowed to interchange to the RBMN is the NS. The impact of this restriction is significant. To the open DL location, door to door rates using the CP bridge route are nearly 19% less expensive than the NS bridge route, which significantly increases our cost to serve the second destination.

Wanting to consider all routes for our 800 railcar per year move of calcium chloride between Ludington, MI and Opelousas, LA, we sought rates using both the UP and BNSF as bridge carrier to the AKDN. While negotiating new rates, we were under the impression that a paper barrier existed between the UP and the AKDN. Through the help of the STB's Rail Office of Public Assistance, Governmental Affairs and Compliance, we learned that in fact no paper barriers are currently in place. The AKDN finally provided their numbers for the BNSF route, but only after two weeks, eight phone calls and an e-mail. This behavior is uncompetitive and unacceptable.

In requesting this hearing, the STB not only asked for competitive issues, but also for solutions. Shippers benefit from the continuation of rail service to areas that Class I railroads might not otherwise support. It is not in the public interest to eliminate all paper barriers, as these may facilitate the start-up of small rail companies that otherwise might not be able to compete. However, an outright ban on route options is unnecessarily restrictive. Paper Barriers need to be reasonable. The barriers should not guarantee the full margin to a railroad that has chosen to divest of their tracks and operations in an area. Barriers should not be evergreen. The justification for a barrier is probably no longer valid twenty years after a track sale As our example shows, shippers are confused on whether paper barriers are in place. Paper Barriers should be made publicly available to shippers. A listing of which barriers are in place and for what duration of time would make these arrangements more transparent to shippers and prevent shortlines from arbitrarily declining to quote competitive business.

Routing Protocols: Routing protocols also limit our transportation options. While we understand and support the railroad's need for efficient operations, protocol objectives don't always promote the most efficient route. Rather, they sometimes simply equalize the line-haul between two carriers, even if this results in hundreds of additional freight miles to accomplish the objective.

For example, protocol dictates that shipments between UP served Southern Louisiana origins and New Jersey CSXT served destinations be interchanged in Salem. Without this protocol restriction, the freight could route via New Orleans, eliminating 494 unnecessary miles from the transit. The additional miles add additional cost, wear and tear to our railcars and inflate our fuel surcharges. The increase in fuel alone is approximately $175 per car per trip.

Routing protocols should be guides rather than mandates. Mandated routes are not necessary. Competitive options which provide incentives for the railroads to be most efficient and service oriented would be beneficial to all.

Contract Negotiations and the use of Rate Case Procedures: Although more shippers have taken advantage of the revised Rate Case Guidelines, Railroads continue to make it more and more difficult for Shippers to benefit from them. As we negotiate contracts, there are undoubtedly several lanes which are more costly than others. As negotiations wind down, we have asked several Railroads to take multiple lanes to common carriage (tariff) rates, allowing us to be in a position to file a rate case. The Railroads have either refused to offer common carriage rates to OxyChem or have stated that, if OxyChem insists on a common carriage rate being quoted, the rail carrier will withdraw all of the contract rates it has offered, including for movements for which OxyChem has not requested a common carriage rate. In 2008 OxyChem contacted the Board's Informal Rail Customer and Public Assistance Program and were told, "Unfortunately, the railroads can and frequently do, bundle rates in contract rate proposals. They are required to provide a tariff rate to a shipper upon request, but the decision to offer contract rates is the railroad's alone." Quite frankly, this is the reason that many shippers have not been able to seek relief from the Board. Shippers cannot afford to pay tariff rates on all lanes while a Rate Case is tried. Shippers should be able to request and receive tariff rates on any lane.

OxyChem is grateful for the opportunity to comment on competition in the Railroad Industry. It is time for the Board to revisit these items. Times have changed, resulting in an unbalanced playing field. Anti-competitive behavior and artificial barriers limit our choices and compound the inequities. We are hopeful that the specific examples sited by OxyChem will help the Board understand the current state and find reason to move to a more balanced future state.

Respectfully Submitted.

Peter Burns

OCCIDENTAL CHEMICAL CORPORATION